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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Enforced or Involuntary Disappearances on its mission to The Gambia: comments by the State* **

* Reproduced as received.
** The numbering of the paragraphs has been modified to reflect the numbering appearing in the Edited Version of the report A/HRC/39/46/Add.1.

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1814579

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The Government of the Republic of The Gambia welcomes the Report of the Working Group on Enforced or Involuntary Disappearances. The Government hereby acknowledges with appreciation the Recommendations issued by the Working Group. Please be informed that we have considered the report and wish to concur with the findings of the Working group.

Please find herein responses from the Government on the recommendations issued by the working group entailing the current steps being taken by the Government in ensuring compliance with international standards.

A. Legislation and institutional framework

(a) Expressly introduce a prohibition of enforced disappearance in the Constitution;

This recommendation is accepted as it will form part of the Constitution Review process.

(b) Introduce a specific crime of enforced disappearance in the criminal code punishable by appropriate penalties that take into account its extreme seriousness. The legislation criminalizing enforced disappearance should encompass:

(i). the introduction of the various modes of criminal liability, including in relation to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(ii). the application of command or superior individual criminal responsibility for such crime;

(iii). the express mention that enforced disappearance is a continuous crime to which amnesties or immunities cannot be applied.

This recommendation is accepted as The Gambia has signed the Declaration on Enforced Disappearance and has commenced the ratification process, it is envisaged that upon completion, this will *be* domesticated which will result in its inclusion in the criminal code as an offence with all its necessary components of criminal liability.

(c) Complete the ratification process of the ICPED as soon as possible by depositing the instruments of ratification to the UN Secretary-General and with the express recognition of the competence of the Committee on Enforced Disappearances according to Articles 31 and 32 of the Convention;

This recommendation is accepted. The ratification is ongoing and will be deposited upon completion.

(d) Complete the ratification process of the Convention Against Torture and its Optional Protocol;

This recommendation is accepted. The process is at its completion as we await the signature of The President on the Instrument of Ratification which will then be deposited at the office of the Secretary General of the UN.

(e) Ensure *in legislation and in practice* that deprivation of liberty be carried out only by appropriate law-enforcement agencies;

This recommendation is accepted. It is envisaged that this will be part of the recommendation on law reform.

(f) Create a nation-wide digitalized system of registration of all persons deprived of liberty;

This recommendation is accepted.

(g) Dismantle the Mile 2 Prison and build a new prison in compliance with international standards;

This recommendation is noted. Plans are on the way to reform the prison system.

(h) Complete the reform of the broadly understood security sector, above all of the intelligence services, including a thorough human rights vetting;

This recommendation is accepted and this is ongoing.

(i) Ensure that the newly created National Human Rights Commission complies with the Paris Principles;

This recommendation is accepted. This is the envisaged outcome.

(j) Take measures to strengthen the independence of members of Parliament and their ability to exercise freely their mandate;

This is recommendation is accepted.

(k) Clarify the relevant legal doctrine for domestication of the international human rights treaties in the national legal system and transpose them into the national law;

This recommendation is accepted. As The Gambia is a dualist state, all international treaties have to be ratified by the National Assembly and domesticated into domestic law to be invoked at the national level.

B. Truth

(a) Create a registry for cases of grave human rights violations, including enforced disappearances, committed between 1994 – 2016, taking into account the information gathered by the TRCC;

This recommendation is accepted.

(b) Establish a national DNA databank with samples of relatives of disappeared persons for DNA testing and matching;

This recommendation is accepted but there are challenges of both technical and financial.

(d) Adopt a comprehensive strategy and plan for search, identification, excavation and proper investigation of existing burial sites and identification of new ones;

This recommendation is accepted. It is envisaged that this mechanism will be in place.

(e) Ensure preservation of the sites and the protection of the chain of custody of the samples; reinforce the forensic capacity of the investigators, the prosecutors and the judiciary and ensure that they have adequate resources;

This recommendation is accepted and will be accomplished with the assistance of partners.

(f) Ensure an access to relevant, including confidential, information, in particular to archives, in order to facilitate the localization of undiscovered gravesites, to speed up the search for missing persons, and to clarify cases of enforced disappearances;

This recommendation is accepted.

(g) Develop a gender-sensitive policy and action plan to provide support and rehabilitation for families of forcibly disappeared persons, including specific measures to support families of disappeared persons whose death is confirmed through the truth- seeking processes.

This recommendation is accepted.

84. The Working Group recommends that the TRRC:

(a) Is composed of independent and professional Commissioners of the highest moral authority and with extensive human rights experience based on a full and thorough vetting process;

This recommendation is accepted. Section 4 and 5 of the TRRC Act provides for the appointment of the commissioners. Further, guidelines were issued and published for the selection and appointment of commissioners of the TRRC which is ongoing.

(b) Is provided adequate human and financial resources as well as sufficiently broad powers, including the power to summon current and former officials;

This recommendation is accepted as it is envisaged outcome. Section 27 of the TRRC Act of 2017 provides for the funds of the Commission. Further Section 15 of the TRRC Act which also includes the power to summon officials.

(c) Has the capacity to subpoena information from any source and witness, enter any State institution and have free access to any State archive;

This recommendation is accepted. Further, this is provided for under Section 15 of the TRRC Act, which contains the power to subpoena witness, access any premises or request any information.

(d) Is equipped with the technical capacity, including forensic expertise, to conduct exhumations working in coordination with the law enforcement and prosecutorial authorities;

This recommendation is accepted.

(e) Adopts a victim-centred approach and be fully accessible to the families of disappeared persons. Victims and the public should be kept informed on the functioning of the TRRC as well as on its proceedings;

This recommendation is accepted. The TRRC process indeed puts the victims at the centre of the process.

(f) Ensures the protection of witnesses through the establishment of appropriate witness protection programs;

This recommendation is accepted. Section 34 of the TRRC Act provides for witness protection.

(g) Exclude the possibility to grant amnesties for acts of enforced disappearances;

This recommendation is accepted. The TRRC Act provides that amnesties shall not be available for crimes against humanity.

C. Justice

(a) Carry out all investigations, prosecutions and judicial proceedings in accordance with the principle of due diligence, taking into account the complexity of the enforced disappearances, the context in which they occurred and the patterns that explain why the events occurred, and ensure that there are no omissions in the gathering of evidence or in the development of lines of investigation;

This recommendation is accepted. It is envisaged that once the law prohibiting and criminalized enforced disappearance, the investigation and prosecution of such report cases will be carried out according to the principle of due diligence.

(b) Strengthen the independence and impartiality of the Judiciary, including enhancing the capacity of The Gambian lawyers to adjudicate, through appropriate training and education;

This recommendation is accepted and this is ongoing.

(c) Consider the truth-telling mandate of the TRRC as complementary and not as an alternative to criminal justice, ensure coordination and information sharing between the TRRC and criminal justice system;

This recommendation is accepted.

(d) Ensure that persons who have or are alleged to have committed offences of enforced disappearances do not benefit from any special amnesty law or similar measures that might have the effect of exempting them from criminal liability;

This recommendation is accepted. The Act also provides that amnesty cannot be granted for crimes against humanity.

(e) Take all measures to bring those responsible of enforced disappearances to justice, including by seeking the extradition of those who are currently abroad;

This recommendation is accepted. Upon the recommendation of the TRRC.

(f) Guarantee that criminal investigations of enforced disappearances are conducted, and prosecutions of identified suspects is carried out by a specialized and appropriately trained team of investigators, prosecutors, and forensic experts;

This recommendation is accepted. All reported cases of Enforced disappearance will be investigated and prosecuted by trained investigators and prosecutors. There are challenges as to forensics but the government is making strides to seeking assistance› from partners for assistance.

(g) Guarantee that the authorities in charge of the investigation have the jurisdictional, logistic and scientific resources necessary to collect and process evidence, and notably the power to access all documents and information relevant to the investigation, including on the possible locations of victims remains;

This recommendation is accepted. The Government is facing numerous capacity challenges especially with scientific data. It is envisaged that this will be rectified with the assistance of partners.

(h) Victims should have opportunities to participate in and be heard during the investigative and judicial proceedings — both regarding the clarification of enforced disappearances and the punishment of those responsible — and in seeking fair compensation;

This recommendation is accepted.

(i) Digitalize the judicial system and the prisoners' registry. In accordance with article 10 of the Declaration, an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention.

This recommendation is accepted.

D. Reparations and Memory

(a) Develop, as a matter of urgency, reparations policy considering the specific needs of women and children and make adequate provisions for it;

This recommendation is accepted.

(b) Create a system of professional and victim-oriented psychosocial assistance for the relatives of the disappeared in relation to the physical, mental and economic consequences resulting from the absence of the disappeared, in particular in the context of the transitional justice mechanisms;

This recommendation is accepted.

(c) Establish mechanisms that provide for social allowances

This recommendation is noted.

(d) Provide support for civil society remembrance initiatives, including for their proper maintenance through public funds;

This recommendation is noted.

(e) Consider erecting national and local monuments and establish commemoration days, aimed specifically at remembering disappeared persons;

This recommendation is accepted.

(f) Promote national dialogue through community workshops in the different regions of The Gambia and in schools;

This is accepted and ongoing by both government and its partners including civil society organisations.

(g) Include human rights in educational institutions at all levels, as well as in police and military training centres;

This recommendation is accepted.

87. The Working Group recommends that the international community supports The Gambia in this transition period, notably with the provision of technical assistance, capacity-building and training in all relevant aspects of the transitional justice process.

This recommendation is highly appreciated

88. The Working Group invites the Government of The Gambia to submit within 90 days of the date of the presentation of the present report to the Human Rights Council a timetable showing the steps that it will take to implement the present recommendations.

This is accepted.

The Government of The Gambia wishes to take this opportunity to extend its appreciation to the Working Group and looks forward to the presentation of its Report to the 39th Session of the Human Rights Council in September 2018.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Serbia: comments by the State* **

* Reproduced as received.
** The numbering reflects the numbering appearing in the report A/HRC/39/46/Add.2.

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General Remarks:

We would like to point that, in accordance with the Constitution of the Republic of Serbia, the Autonomous Province Kosovo and Metohija is an integral part of the Republic of Serbia. By the United Nations Security Council resolution 1244 (1999), the United Nations Interim Administration Mission in Kosovo (UNMIK) was fully mandated with governance of the Province.

Having in mind the status neutrality, an asterisk should be added above "Kosovo" in tables to read "Kosovo*" and a footnote with explanation "This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence".

It is unacceptable to call a territorial unit of the Republic of Serbia, AP Kosovo and Metohija, a state, as stated in the document submitted by the Humanitarian Law Centre. Please note that AP Kosovo and Metohija is the autonomous province and a part of the Republic of Serbia, and pursuant to the United Nations Security Council resolution 1244 of 10 June 1999, it is under a temporary civil and military governance of the United Nations.

Having in mind that the visit based on which the report with recommendations was drafted took place in 2014, before the withdrawal of EULEX mission, and before forming of the Special Court for KLA War Crimes in Kosovo and Metohija, the Working Group for enforced disappearances is asked to draft the report on the current situation in AP Kosovo and Metohija with regards to operations of the Special Court for KLA War Crimes in Kosovo and Metohija and Special Prosecutor Office for crimes committed by KLA in Kosovo and Metohija, as one of the tasks of the Special Court should be prosecution of persons responsible for enforced disappearances. The Court should also examine the negative consequences of EULEX Mission withdrawal with regards to solving of issue of missing persons on the territory of AP Kosovo and Metohija.

The terminology regarding the name of the Commission on Missing Persons should be harmonized, to avoid the impression that there are several bodies dealing with the issue of missing persons in Serbia. The full name of the Commission in English should be "The Commission on Missing Persons of the Government of the Republic of Serbia".

The terminology regarding the name of the former Yugoslav people's army should also be harmonized, as it is mentioned as "Yugoslav People's Army" and "Yugoslav National Army".

The term "neighbouring countries" referred to in recommendation 90 should be replaced with "all countries and authorities in the region" to fully harmonize it with the text of recommendation 87.

Comments to individual recommendations

87. Disclose all information on mass graves and make that information accessible to all countries and authorities in the region

With regards to allegations of the Humanitarian Law Centre that there is an obvious lack of strategic activities of the state on improvement of cooperation with EULEX and Provisional Institutions of Self-Government in Priština, we would like to point that the Republic of Serbia also expressed its readiness for cooperation in the previous period through inviting Ms. Alexandra Papadopoulou, Head of EULEX in AP Kosovo and Metohija, to establish the official contact with Belgrade, and those invitations have not been positively answered to by EULEX.

90. Speed up the process of tracing missing persons trough strengthened cooperation with institutions engaged in tracing disappeared persons in neighbouring countries, especially between prosecutors and judicial institutions. Such cooperation must include the exchange of relevant evidence.

The Republic of Serbia is committed to regional cooperation on solving the issue of war crimes, through the War Crimes Prosecutor Office, and has been continuously taking steps towards promotion of that cooperation. Regional cooperation is carried out in the field of investigating war crimes, obtaining evidence and prosecuting of perpetrators. The cooperation is realized in accordance with the documents on cooperation, mostly through applications for provision of legal assistance and through assignment or takeover of criminal prosecution.

The War Crimes Prosecutor Office of the Republic of Serbia (since it was founded on 5 February 2018) received a total of 1,311 applications for legal assistance from the competent Prosecutor Offices in Bosnia and Herzegovina, Croatia, Montenegro and the Special Prosecutor Office for crimes committed by KLA in Kosovo and Metohija. The War Crimes Prosecutor Office of the Republic of Serbia submitted a total of 483 applications for legal assistance to the competent Prosecutor Offices in Bosnia and Herzegovina, Croatia, Montenegro and the Office of Special Prosecutor Office for crimes committed by KLA in Kosovo and Metohija.

Regular regional conferences like the "Palić Process" and Regional Conference of Prosecutor Offices in Brioni represent a special type of regional cooperation, along with participation in the implementation of regional projects like "Processing War Crimes and the Search for Missing People" (2015-2017, 2017-2019) implemented with the support of UNDP. Eight regional and bilateral consultations and/or meetings with the representatives of competent Prosecutor Offices from countries of the region were held within that project. Main directions for cooperation are harmonized at regional consultations, whereas information is shared and cooperation on actual cases is coordinated at bilateral meetings.

War Crimes Prosecutor Office also cooperates with Provisional Institutions of Self-Government in Priština, pursuant to Mutual Legal Assistance Procedures stipulated by the Integrated Border Management Agreement (IBM) adopted by the Government of the Republic of Serbia through the conclusion on 7 March 2013. After adoption of the Procedures, the cooperation was carried out through the EULEX Special Prosecutor Office in the Autonomous Province Kosovo and Metohija.

The tendency of explicit or tacit refusal of Provisional Institutions of Self-Government in Priština to act upon applications for mutual legal assistance of the War Crime Prosecutor Office of the Republic of Serbia is prominent due to limitation, and then termination of mandate of EULEX Mission on the territory of AP Kosovo and Metohija.

The cooperation of War Crimes Prosecutor Office with the Prosecutor Office of the International Residual Mechanism for Criminal Tribunals is continuous and intense. The cooperation is carried out through the Liaison Officer of the Office of the Prosecutor at the International Residual Mechanism for Criminal Tribunals and promoted through regular periodic meetings. Main directions for cooperation are discussed and activity schedule is harmonized at the meetings held at the level of prosecutors (War Crime Prosecutor of the Republic of Serbia - Chief Prosecutor of the International Residual Mechanism for Criminal Tribunals), whereas working meetings and consultations at the level of case processors (deputy War Crime Prosecutors – prosecutors, investigators of the International Residual Mechanism for Criminal Tribunals) are used for evidence, expertise and experience sharing.

Through the Liaison Officer, the War Crime Prosecutor Office submitted 152 applications for assistance to the Prosecutor Office of the International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals. On the basis of the applications submitted, the War Crime Prosecutor took over 12,037 documents on 458,509 pages and 276 audio and video recordings from the Prosecutor Office of the International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals.

The wrong information listed on page 10 of the Table in the document of the competent public authorities of the Republic of Serbia and the relevant civil society organizations, stating: "It should also be mentioned that there are activities on establishing the legal conditions to enable the forming of the Prosecutor Office to prosecute war crimes committed in Kosovo and Metohija within this project, to ensure the inclusion of all the institutions that can contribute to solving of this issue" should be deleted.

91. Everyone involved must support the search for missing persons by providing relevant information and documentation at the national and regional level.

Since 2006, when it was founded by the Government of the Republic of Serbia, the Commission on Missing Persons has been cooperating with the War Crime Prosecutor Office, and the joint activities are promoted through enabling continuity in data and information sharing, as well as activity coordination. Cooperation of the Commission on Missing Persons and the War Crime Prosecutor Office was made formal through the Memorandum of Cooperation signed on 12 June 2018.

The Commission on Missing Persons provides expert and technical assistance to War Crime Prosecutor Office in the course of scene investigation to establish the possible presence of remains on a certain site.

Upon request of the War Crime Prosecutor Office, and for the purpose of conducting actual criminal proceedings, the Commission on Missing Persons submits documents and data from its records to the War Crime Prosecutor Office.

The Commission on Missing Persons informs the War Crime Prosecutor Office on the activities undertaken and significant events regarding the process of searching for missing persons at the national and international levels, if such activities and events could be of importance for the investigation and prosecution of criminal offences under the jurisdiction of the War Crime Prosecutor Office. These events and activities mostly include, but are not limited to, the following: identification performed; handover of remains to family members; activities on finding the missing persons in the countries in the region and/or the territory of the Autonomous Province Kosovo and Metohija; events of special significance for cooperation of the Commission on Missing Persons and bodies dealing with issues regarding missing persons in the countries in the region and/or the territory of the Autonomous Province Kosovo and Metohija.

The Commission on Missing Persons forwards information on circumstances of disappearance of certain persons and possible sites on which the bodies of murdered persons are buried to the War Crime Prosecutor Office. Employees of the Commission on Missing Persons obtain such information in the course of their work, during contact with family members of missing persons, and cooperation with colleagues from the region, or in other ways.

In accordance with the objective defined in point 5 of the National Strategy for War Crime Prosecution, the War Crime Prosecutor Office continued with the activities on promotion of cooperation between state authorities included in investigation and prosecution of war crimes, through participation of its representatives in round tables and mixed working bodies.

Apart from the aforementioned, the intensified cooperation between the War Crime Prosecutor Office and the Commission on Missing Persons resulted in the idea for establishing cooperation between the Prosecutor Office of the International Residual Mechanism for Criminal Tribunals and the Commission on Missing Persons.

During its mission, the Prosecutor Office of the International Criminal Tribunal for the former Yugoslavia collected a large amount of data and documents on circumstances of disappearance, for its own investigations. Medical and forensic teams hired upon request of the Prosecutor Office of the International Criminal Tribunal for the former Yugoslavia made a very valuable documentation about remains found on the territory of conflicts, particularly on the territory of the Autonomous Province Kosovo and Metohija (reports on autopsy and identification, reports of forensic teams of the Prosecutor Office of the

International Criminal Tribunal for the former Yugoslavia performing exhumations of bodies and performing investigations of persons, objects and scenes, as well as other similar documents)[1]. Those data are very significant for the completion of records of the Commission on Missing Persons and further activities on resolving the fate of persons still registered as missing.

We believe that the update and completion of records of the Commission on Missing Persons with new information will contribute to the quality of proceedings under the jurisdiction of War Crime Prosecutor Office.

Good cooperation of the War Crime Prosecutor Office and the International Commission on Missing Persons (ICMP) is also indicated by the statement of Mr. Matthew Holliday, ICMP Head of Western Balkans Program (5 October 2017), who pointed out that the International Commission on Missing Persons has the most successful cooperation with the War Crime Prosecutor Office, both in terms of statistical indicators reflected by the applications submitted and in terms of establishing a mutual relation of trust among representatives of that War Crime Prosecutor Office and the International Commission on Missing Persons[2].

92. Continue the regional dialogue on missing persons and initiatives aimed at finding solutions to properly solve the issue.

With regards to allegations of the Humanitarian Law Centre about obstruction of access to relevant information and documents of public importance, we would like to point that the evidence of crimes against Serbs committed on the territory of AP Kosovo and Metohija, collected by UNMIK, has been systematically destroyed over the past years, which is why UNMIK was not able to hand over evidence of crimes against Serbs to EULEX. On 15 August 2012, the archives of the Police Station in Peć, the database – archives in the building of the EU in Dragodan in Priština, and the files of the Headquarters of Kosovo Police in Priština were all set on fire. The main witnesses of various investigations of the so-called high profile suspects for crimes against Serbs have been assassinated over the years.

96. Immediately open archives that are relevant to cases of enforced disappearances in order to facilitate the localization of undiscovered gravesites and speed up the search for missing persons.

In the course of promotion of efficiency of work and availability of data, upon request of the War Crime Prosecutor, the archives of the Committee for collection of data on crimes against humanity and international law was relocated from the premises of the Government of the Republic of Serbia to the premises of the War Crime Prosecutor Office, and the cases are currently being classified according to the territory (the Republic of Croatia, Bosnia and Herzegovina and AP Kosovo and Metohija).

Relocation of archives and classification of files has already presented good results, particularly in terms of regional cooperation. Acting upon the application for assistance of the Prosecutor Office of Bosnia and Herzegovina, the War Crime Prosecutor Office sent the documents from the Committee archives to the Prosecutor Office of Bosnia and

[1] Through joint efforts of Liason Officers and staff of the Tribunal working on processing the applications for assistance of the War Crime Prosecutor Office, medical and forensic documents of extreme value in terms of evidence were found in databases, and used in cases of War Crime Prosecutor Office.

[2] ICMP has successfully identified about 1300 victims whose bodies were exhumed on the territory of the Republic of Serbia. According to ICMP data, there is an ongoing search for about 12000 more missing persons on the territory of former Yugoslavia. At the meeting it was arranged that ICMP will continue providing assistance to the War Crime Prosecutor Office in the same manner and under the same terms, through ICMP Office in Tuzla, and relocation of the laboratory to Hague will not incur additional costs.

Herzegovina, and those documents were used as evidence in the proceedings of the Prosecutor Office of Bosnia and Herzegovina.

101. Ensure a gender-sensitive approach when designing and implementing reparation progremmes, in order to address gender inequality

The Republic of Serbia adopted the second National Action Plan for the implementation of United Nations Security Council Resolution 1325 on Women, Peace and Security in the Republic of Serbia (2017-2020). This is a continuation of promotion of position and security of women, particularly at the local community level. The National Action Plan includes activities pertaining to gender aspect regarding events on the territory of the former Yugoslavia, in particular to:

- promote the efficiency of the security system and all other actors for undertaking the necessary legislative and other measures with a view to fully commit to prevention, investigation and punishment of violent acts against women in conflict and post-conflict recovery of society, crises and emergencies (activity 4.3) ;
- enable effective and efficient work on discovering, arresting and prosecuting the perpetrators of international war crimes on the territory of the Republic of Serbia, including the perpetrators of all crimes against humanity on the territory of the former SFRY whose victims are women and girls (activity 4.8)
- overcome stereotypes and prejudice against women who suffered violence during conflict and post-conflict recovery of society, crises and emergencies, empowering them to get out of isolation and stop the silence about that traumatic experience (activity 5.5).

In the previous period, the Republic of Serbia implemented significant measures on harmonization of legislative and strategic frameworks with the EU standards, as well as institutional capacity strengthening to implement the policies in the field of gender equality in a corresponding manner.

The Republic of Serbia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) in October 2013. In order to enable harmonization with the Convention, amendments to the existing laws were made, and a special law in the field of violence against women was adopted.

The Law on Prohibition of Discrimination governs special measures for prevention and elimination gender-based discrimination, as well as the procedure of legal protection of persons exposed to discrimination.

The Law on Gender Equality from 2009 governs the details of the method of exercising equality of women and men and promotion of policy of equal opportunities. The adoption of the Law on Gender Equality is planned for the fourth quarter of 2018. The National Strategy on Gender Equality 2016-2020 and the accompanying Action Plan also stipulate numerous measures and activities that the state needs to implement in order to reduce inequalities and promote the status of women.

103. Strengthen and systematize the witness protection programmes to ensure they are comprehensive.

With a view to promoting the cooperation, on 6 July 2017, the Ministry of Internal Affairs and the War Crime Prosecutor Office signed the Protocol on Cooperation in the field of witness protection. Together with the Witness Protection Unit, the representatives of the War Crime Prosecutor Office participate in numerous training sessions and seminars in the field of witness protection.

104. Ensure reparation is available to all victims of enforced disappearance. Compensation should not be limited to the victims of enemy forces only. Serbia should consider introducing the nesessary legislative amendments in order to broaden the definition of vicitim.

We propose deletion of the following sentence: *„Key aspects of the analysis are as follows: -the main principles of organisation and functioning of support services network for victims and witnesses"* - and replacing it with the following data: „OSCE Mission in Serbia is implementing a IPA 2016 EU founded project „Support for Victims and Witnesses of Crime" the said project among other activities has several aimed at compensation claims. In order to promote better realization of the right to compensation of victims of crime and in a greater number of cases, in criminal proceedings, instead of having to go to litigation an analysis on court practices related to deciding on compensation claims by criminal courts shall be prepared. Also drafting of a manual, for judges on the outstanding issue of compensation claims, as well as the compilation of examples of standard compensation claim scales for judges and examples of international and European regional best practices is planned. This should enable judges to easier render decisions on compensation claims in criminal proceedings and increase the efficiency of the procedure, reduce costs, no new procedure would be initiated and the position of victims would improve."

The Republic of Serbia is committed to ensuring the protection of civilian invalids of war and members of their families, as well as of families of civilian victims of war. The current regulations of the Republic of Serbia precisely define the conditions for exercising the right to compensation or pension for the victims of war.

The right to family pension is a personal right that, in accordance with the *Law on Pension and Disability Insurance*[3], is granted to members of the family of the deceased insuree or beneficiary of right, while fulfilling the conditions prescribed by the Law. As such, it can be recognized only if there is evidence of death, obtained in accordance with the law. The fact is that members of families of missing persons, out of reverence towards such persons, do not want to initiate a procedure in which a missing person would be declared as deceased, thus preventing the exercising of the right to compensation or pension for the victims of war.

The *Law on the Rights of Civilian Invalids of War*[4] does not exclude the protection of members of families of civilian invalids of war missing under circumstances (Article 2). Namely, a missing civilian is equated with a civilian victim or deceased civilian, but for the purpose of initiating the procedure for exercising the prescribed rights for that person, it is necessary to declare the missing person as deceased in the appropriate procedure regulated by other regulations.

Following the declaration of the missing person as deceased, the procedure for recognizing the rights prescribed by the Law on the Rights of Civilian Invalids of War can be carried out in the shortest time possible, so that, in accordance with the mentioned international treaties, the members of the family of such person can be provided with a fast, fair and adequate compensation.

No provision of ratified international treaties stipulates the obligation of States Signatories to recognize the rights established by special regulations to the members of families of missing persons who have not been declared as deceased. Therefore, the aforementioned procedure regarding the recognition of the rights prescribed by the Law on the Rights of Civilian Invalids of War is not contrary to the ratified international treaties.

Regarding the allegations that there is discrimination in the protection of civilian invalids of war and members of families of civilian victims of war as opposed to military invalids and members of families of deceased soldiers, we would like to stress that:

[3] "Official Gazette of the Republic of Serbia", No. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14, 142/14.

[4] "Official Gazette of the Republic of Serbia", No. 52/96.

The Law on the Rights of Civilian Invalids of War is harmonised with the following international treaties: The Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention Relating to the Status of Refugees, the Framework Convention for the Protection of National Minorities, as well as with the Constitution of the Republic of Serbia and Law on the Prohibition of Discrimination and the Law on Prevention of Discrimination against Persons with Disabilities.

Special regulations regulate the special protection of all disabled persons. Within this protection, two groups of disabled persons - war veterans and victims of war, who are positively discriminated as opposed to other disabled persons, are especially distinguished.

Differences in protection are based primarily on the principle of objective liability of the State for the damage incurred - disability, i.e. the loss of a family member suffered by military personnel in performing military duties/for military purposes and civilian persons.

The Law on Prevention of Discrimination against Persons with Disabilities prescribes special protection for civilians who have suffered physical injuries of 50 percent up to 100 percent of disability due to wounds, injuries or lesions. With this, in terms of recognized special rights (reflected in material benefits), positive discrimination has been made towards this category of victims.

Other victims, i.e. victims who have suffered psychological damage, or physical injuries of less than 50 percent, are provided with other relevant compensation that covers material damage and moral injury. This compensation is contained in other general regulations of the Republic of Serbia, which prescribe the right to compensation of damages, and is based on Article 5, item 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The law does not impose a limitation on the time period within which protection may be sought for the present case. It is important to, in the process of exercising the rights under the Law in the case which occurred outside the official period of wartime, i.e. military actions, prove the origin of explosive material, i.e. the execution of hostile diversion or terrorist action during the time of peace.

We would like to point out that the Constitution of the Republic of Serbia, as well as the confirmed international treaties, do not explicitly prescribe a circle of relatives of a civilian victim of war who should be included in the protection, nor the conditions under which such relatives can achieve the said protection.

In drafting the normative solutions, due care was taken to include the relatives between which there is a maintenance obligation. In this way, the Law on the Rights of Civilian Invalids of War provides for the protection of close family and parents of a civilian victim of war. Inclusion of a wider circle of relatives in this type of protection, as well as of relatives who did not live within the same household, would lead to an increase in the number of beneficiaries, which requires a significant increase in the allocation of funds for this purpose.

Regarding the allegations from the Recommendation that current regulations do not provide protection for all categories of civilian victims of war, that it doesn't cover all grounds of disability and that it doesn't cover all the territories in which a civilian person was incapacitated, killed or went missing, we would like to point out the following:

Pursuant to the principle of state sovereignty and the principle of the territorial validity of the law, the provisions of the previously valid Law on the Protection of Civilian Invalids of War[5], as well as the provision of Article 2 of the current law, may apply only to cases where the death or physical injury of a person had occurred exclusively in the territory of the Republic of Serbia.

[5] "Official Gazette of the Socialist republic of Serbia", number 6/75.

The special protection of civilian invalids of war and members of families of the deceased civilian invalids of war and civilian victims of war in relation to the protection of other disabled civilians and their family members is based on the increased responsibility of the State for the damage suffered by civilians under the circumstances of abuse or deprivation of liberty by the enemy during the wartime, carrying out war operations, from war material left behind or enemy diversionist, i.e. terrorist actions. This increased responsibility of the Republic of Serbia towards civilians who suffered physical injuries under the said circumstances or towards the family members who have been killed, i.e. died under these circumstances outside the territory of the Republic of Serbia does not exist.

Possible prescription of the obligation of the Republic of Serbia to provide a special (extended) protection to these persons would mean that the Republic of Serbia assumes responsibility for physical injuries/bodily harm or deaths of civilians arising under war or other above mentioned circumstances on the territory of other republics of the former SFRY or in any other country in the world. Persons who have, under these circumstances, been killed outside the territory of the Republic of Serbia may, according to our legislation, exercise their rights on a different basis, in accordance with the regulations in the field of protection of persons with disabilities or social protection, which are also recognized for other citizens of the Republic of Serbia.

The allegation that the Law on the Rights of Civilian Invalids of War does not provide the rights to all categories of victims, such as victims of rape, is not acceptable. On the contrary, in accordance with the provisions of the Law on the Rights of Civilian Invalids of War and Victims of Rape, the status of a civilian invalid of war may be recognized if rape has occurred under the circumstances prescribed by the said law and if the victim has visible traces of wounds, injuries or lesions.

In regards to the allegations of the Humanitarian Law Center, that the rights under the Law on the Rights of Civilian Invalids can be exercised only by civilians who have suffered physical injuries/bodily harm or who have suffered from hostile diversion or terrorist actions, i.e. that all victims who were subjected to violence or injury by members of the armed formations that the Republic of Serbia does not consider hostile are excluded from the protection, thereby discriminating against the members of certain national minorities in which they were targeted by members of Serbian forces during the wars of the nineties the last century, we would like to point out the following:

This remark is based on individual extraordinary events that can not be valid for general practice. Such events are subject to sanctions in accordance with the general regulations of the Republic of Serbia on the responsibility of the perpetrators and material compensation for victims.

Concerning the allegations mentioning the social protection of civilian victims of wars, we would like to stress that civilian victims of war, as well as all the other citizens of the Republic of Serbia, can exercise rights in the field of social protection under equal conditions, provided they fulfil the requirements prescribed by law.

107. Raise public awareness of war crimes prosecution, including investigation into cases of enforced disappearances, in order to reduce negtive feelings about war crimes proceedings.

The Republic of Serbia has shown unequivocal will to determine the responsibility for war crimes, which is manifested through successful cooperation with the International Criminal Tribunal for the Former Yugoslavia, and through proceedings before the domestic authorities.

This is supported by the fact that the Republic of Serbia handed over all the persons the Tribunal asked for. Also, the Republic of Serbia has acted upon all tne requests of the Tribunal when it comes to the protection of witnesses who have permanent or temporary residence in a part of the territory of the Republic of Serbia in which the authorities of the Republic of Serbia exercise their competencies.

In order to build public confidence in its work, the Office of the War Crimes Prosecutor strives to ensure transparency in its work, which also affects the reduction in the

possibility of disinforming the public and the creation of an objective image of the conducted war crimes proceedings.

Cooperation with civil society is enhanced through affirmation of common goals, reaching the truth and justice, and prevention of impunity. Citizens and Civil Society Organizations are a very important source of relevant data and documentation. In addition to citizens' associations, the media also represent an important factor in establishing trust in institutions. With transparency of work and cooperation with the media, the Office of the War Crimes Prosecutor strives to contribute to the practice of regular, objective and impartial reporting in the field of war crimes proceedings.

Respecting the right to information guaranteed by the Constitution of the Republic of Serbia, the Office of the War Crimes Prosecutor, in a truthful, complete and timely manner, informs the public about the handling of specific cases, provided that it does not prejudice the interests of the proceedings, while respecting the right to privacy of participants in criminal proceedings and in a manner that will not lead to the disclosure of classified information.

The appearance and content of website of the Office of the War Crimes Prosecutor has been improved in order to enable the public to monitor the activities of the Office in regards to specific cases, the implementation of relevant strategic documents, as well as all other events relevant to the work of the Office. Due to multiple advantages it provides, the website of the Office of the War Crimes Prosecutor represents, with its continuous improvement, the most important instrument of information about the work of the Office, primarily as a reliable source of all the data relevant to the work of the Office of the War Crimes Prosecutor, which is free and available at all times.

In order to inform the interested parties about access to information on the establishment, organization and work of the Office of the War Crimes Prosecutor, as well as on the data relevant to the content, scope and manner of exercising their rights, the Office of the War Crimes Prosecutor has published on its website, which is also available in English, the Information booklet, which is regularly updated.

In accordance with item 1.4.5.1. of the Action Plan for Chapter 23, the Office of the War Crimes Prosecutor has initiated the holding of round tables and lectures on the topic "Fundamentals of Communication with the Media" for employees of the Protection Unit and Service for Discovering War Crimes. The Office of the War Crimes Prosecutor had received support for the said activities from the team working of the project "Criminal Justice Cooperation: Strengthening Witness Protection in the Fight against Organized Crime, Terrorism and Corruption "(WINPRO III), both in terms of logistics and expertise of international experts in this field.

109. Provide greater institutional and financial support to families and associations of families of victims of enforced disappearance

Criminal processing is a key instrument in exercising of the rights of the injured parties. For this reason, the rights of the injured parties must be an integral part of the process of formulating and implementing an investigation plan in each particular case.

In order to improve the position of victims in war crimes proceedings, the Office of the War Crimes Prosecutor cooperates with victims' associations. Victims' associations play an important role in the communication between the Office of the War Crimes Prosecutor and the injured parties. Participation of prosecutors at gatherings organized by victims' associations provides an opportunity to present the work of the Office of the War Crimes Prosecutor and to encourage the victims to testify. On the other hand, direct contact with the victims provides the Prosecutor with the opportunity to find out which doubts and problems do the victims face, i.e. to identify the deficiencies in terms of information, support and protection system of victims and witnesses.

With regard to institutional support to victims and witnesses, the Office of the War Crimes Prosecutor implements the relevant by-laws and applies the standards in accordance with Directive 2012/29/EU.

On 3 April 2017, the Information and Support Service for Victims and Witnesses (SIP) was established within the Office of the War Crimes Prosecutor, in accordance with the general mandatory instruction of the Republic Public Prosecutor.

In order to provide timely information to interested parties and organizations, a notice on the establishment and operation of SIP, its members with contact information, information for witnesses and injured parties, as well as the brochure of the Republic Public Prosecutor's Office, are published on the official website of the Office of the War Crimes Prosecutor.

Information on the work of the Service for Assistance and Support to Victims and Witnesses at the Office of the War Crimes Prosecutor, as of February 2018, is also available on the interactive map of services and institutions for providing assistance and support to victims of crimes in Serbia. Based on the results of the research of the Organization *Victim Support Europe* and the Victimology Society of Serbia, an interactive map was created that represents the address book of organizations, services and institutions that provide assistance and support to victims of crime in the Republic of Serbia.

Employees at the Office of the War Crimes Prosecutor who continuously maintain contact with the victims attend general and specialist training in order to be able to deal with the victims in an impartial, considerate and expert manner. The trainings are conducted in accordance with Article 25 of the Directive 2012/29/EU and measure 3.7.1.19. from the Action Plan for Negotiation Chapter 23: Judiciary and Fundamental Rights, in the process of accession of the Republic of Serbia to the European Union.

111. Examine without undue delay all locations of potential mass graves.

In accordance with the obligation envisaged by the Action Plan for Negotiation Chapter 23: Judiciary and Fundamental Rights and the National War Crimes Prosecution Strategy, the Office of the War Crimes Prosecutor has adopted and applies the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia 2018-2023. The Prosecutorial Strategy defines two closely related and, to a large extent, interdependent goals: professional, responsible and efficient conducting of investigations in order to discover the sites where the remains of persons killed in armed conflicts in the former SFRY are located and prosecution of responsible persons.

The Office of the War Crimes Prosecutor has conducted and is conducting several proceedings in connection with the remains of those killed during the armed conflict in the territory of the Autonomous Province of Kosovo and Metohija, which are found on the territory of the Republic of Serbia.

- for 48 persons whose remains have been found in Batajnica,

the criminal proceedings for the events of 26 March 1999 in Suva Reka have been validly terminated;

- for 38 persons whose remains have been found in Batajnica,

the criminal charges for the events of 1 April 1999 in the village of Ljubenić have been filed;

- for 20 persons whose remains have been found in Batajnica,

the Office of the War Crimes Prosecutor conducts the proceedings for the events of 27 March 1999 in Padalište;

- for 110 persons whose remains have been found in Batajnica,

the Office of the War Crimes Prosecutor is conducting proceedings for the events of 26 March 1999 in the villages of Mala and Velika Kruša;

- for three persons whose remains have been found in Batajnica, the Office of the War Crimes Prosecutor

is conducting proceedings for the events of 26 March 1999 in the town of Landovica;

- for 53 persons whose remains have been found in Batajnica, the Office of the War Crimes Prosecutor

  is conducting proceedings for the events of 25 March 1999 in Bela Crkva;

- for 86 persons whose remains have been found in Batajnica, the Office of the War Crimes Prosecutor

  is conducting proceedings for the events of 28 March 1999 in Izbica;

- for 313 persons whose remains have been found in Batajnica, the Office of the War Crimes Prosecutor

  is conducting proceedings for the events of 27 and 28 April 1999 in Meja;

- for 57 persons whose remains have been found in Batajnica, the Office of the War Crimes Prosecutor

is conducting proceedings for the events of 5 April 1999 in Rezala and Čitakovo;

- for the murder of Bytyqi brothers in July 1999, whose remains have been found in

Petrovo Selo, the Office of the War Crimes Prosecutor is conducting a new investigation.

In accordance with the above, the Office of the War Crimes Prosecutor has so far covered at least 731 persons whose remains have been found on the territory of the Republic of Serbia.

Since its establishment on 14 August 2018, the Office of the War Crimes Prosecutor has filed an indictment against 202 persons, while the indictments cover events with thousands of victims.

As ordered by the Office of the War Crimes Prosecutor, on 19 and 20 June and 6 August 2018, activities are being continued on the Kiževak mine site, the municipality of Raška, in order to determinate the site of possible mass graves. Two members of the War Crime Investigation Service were present at this location during these activities.

112. Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove obstacles of the ongoing identification work

According to the International Commission on Missing Persons (ICMP), there are approximately 450 mortal remains buried in city cemeteries in Serbia. We would like to point out that the data has been stated in the context of erroneous identifications and exhumations of unidentified mortal remains found in the morgues in the region.

The Commission on Missing Persons of the Government of the Republic of Serbia draws the attention to the fact that bone samples of all 450 N.N. buried bodies in city cemeteries in Serbia (these are mortal remains that have drifted down the river flows from the war affected areas of the Republic of Croatia and BiH to the territory of the Republic of Serbia) have been taken for DNA analysis and that DNA profiles were extracted from them. Also, out of the total number of 450 bodies, 256 bodies have been identified and handed over to interested parties or families in the Republic of Serbia through this process, with the support of ICMP, up to now.

At the moment, there are mortal remains of 196 N.N. persons in city cemeteries in the Republic of Serbia, and this number should be indicated in the table of the Working Group on Enforced or Involuntary Disappearances.

113. Expedite the process of war crimes prosecutions.

The Office of the War Crimes Prosecutor, independently or with the support of the competent state authorities and institutions, the Republic Public Prosecutor's Office and the line ministry, undertakes a series of measures and activities aimed at increasing the efficiency of war crimes prosecution.

In accordance with the prerequisites and principles foreseen by the Action Plan for the Negotiation Chapter 23, a draft text of the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia 2018-2023 was drafted.

This document defines specific measures and activities that need to be undertaken in order to increase the efficiency and quality of the work of the Office of the War Crimes Prosecutor, with principal bodies for these activities and persons responsible for overseeing their implementation being designated.

The Draft document was presented at an expert meeting held on 12 March 2018. The work of the expert meeting was attended by judges, prosecutors, lawyers, and officials of: the Service for Discovering War Crimes, the Protection Unit, the Military Security Agency, the Security Information Agency, the Ministry of Justice, the Ministry of European Integration, the Commission on Missing Persons, the Office for Human and Minority Rights, the Judicial Academy, the OSCE Mission to Serbia, the Humanitarian Law Center and the Belgrade Centre for Human Rights.

Submitted suggestions made after the meeting have been, along with the Opinion and Suggestions of the International Residual Mechanism for Criminal Tribunals, taken into account when defining the final text of the document, which has been adopted at the board of the Office of the War Crimes Prosecutor on 4 April 2018.

In terms of strengthening the administrative and technical capacities, the National Assembly has elected a new War Crimes Prosecutor on 15 May 2017, who took office on 31 May 2017. One Deputy War Crimes Prosecutor has been elected by the National Assembly on 22 March 2018. The State Prosecutorial Council has announced the appointment of three Deputy War Crimes Prosecutors on 15 June 2018, while the procedure for the election of two other Deputy War Crimes Prosecutors is ongoing, based on the State Prosecutorial Council's competition announced on 22 September 2017.

In accordance with the obligation set forth in item 1.4.4.4 of the Action Plan for Negotiation Chapter 23, the employment of psychologists in the Office of the War Crimes Prosecutor, which shall provide support to victims and witnesses, is envisaged.

118. Develop educational materials that promote pluralism, and teach history objectively in order to combat ethnic polarization and ethnic discrimination.

From 2014 till today teachers in prc-university education passed different training programs related to war crimes including wars in the Balkans in the last decade of the 20th century, such as program which was organized by the Tribunal in the Hague.

In the process of teaching and learning teachers use textbooks and additional teaching materials, esspecilly materials developed under Center for Democracy and Reconciliation i Southeast Europe (CDRSEE). This materials are available at the address http://cdrsee.org/publications/education.

Teaching and learning history in pre-university and university education is based on a multiperspecitivity approach.

Sincerely,

Acting DIRECTOR

Suzana Paunović, PhD